Issue 14: Assignment

Level 3 Position:

Both parties should be required to seek prior written approval of assignments and transfers of the Agreement. Thirty (30) days advance notice should be required for assignments or transfers of the Agreement.

Ameritech Illinois Position:

A CLEC may not assign or transfer its Agreement to third persons without the prior written consent of Ameritech Illinois; provided that a CLEC may assign or transfer its Agreement to an Affiliate by providing ninety (90) days prior written notice to Ameritech Illinois of such assignment or transfer.

There are a number of disputes regarding assignment of the interconnection agreement. *First*, Level 3 proposes to add language to GT&C 29.1 that would not only require Ameritech Illinois' prior written consent before Level 3 could assign or transfer the agreement to a non-affiliate,[21] but also would require Level 3's written approval before Ameritech Illinois could assign or transfer the agreement. While this may at first blush appear symmetrical, it is not. Interconnection agreements reflect the fact that the 1996 Act imposes a host of burdens and obligations on the incumbent LEC while conferring a host of rights and benefits upon CLECs. The requirements of one CLEC may impose a burden of a different type or degree than those of another. For this reason, Ameritech Illinois has a legitimate interest in ensuring that it does not face shifting and unforeseeable burdens and obligations due to Level 3 assigning the agreement to an entirely different type of CLEC. Level 3, on the other hand, knows that whoever

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[21] Ameritech Illinois does not seek pre-approval rights when Level 3 transfers the agreement to an affiliate that has no interconnection agreement, provided that Level 3 gives 90 days' advance notice of the assignment. (Ameritech Illinois' Response to Petition at 21.)

assumes Ameritech Illinois' role as the incumbent LEC under the agreement will have the same set of obligations and burdens under the 1996 Act. Ameritech Illinois' position is both reasonable and closely related to the contract principle that one may not assign the benefits of a contract where such an assignment would materially alter the duties of the obligor.

Second, Level 3 opposes language in GT&C 29.1 that would preclude Level 3 from assigning the interconnection agreement to an affiliate that already has an interconnection agreement with Ameritech Illinois. Such a requirement is necessary to prevent confusion and simplify the administration of interconnection agreements. A Level 3 affiliate could always exercise its "most-favored nation" rights to opt-in to the Level 3 agreement as its own, because in that case the Level 3-Ameritech Illinois agreement itself would remain in place. If, however, Level 3 wanted to transfer or assign the existing agreement to an affiliate, the Level 3-Ameritech Illinois relationship would end, while the Affiliate-Ameritech Illinois relationship would arguably now be subject to two different contracts. Thus, for this and other reasons (*e.g.*, the need to ensure the affiliate is solvent and will be able to fulfill the contract being assigned) Ameritech Illinois simply requests the right to approve an assignment to a Level 3 affiliate with an existing interconnection agreement.

Third, Level 3 seeks to delete language in GT&C 29.2 that would require the parties to agree on name change charges before the agreement can be transferred or assigned. Such a provision is necessary because, unless the name change is completed on time, there could be serious billing and other problems in transitioning to the new CLEC.

Ameritech Illinois should not be required to perform this activity until it knows it will be compensated. (*See* Silver Direct at 15-16).

Fourth, Level 3 seeks to add language in GT&C 29.3 in order to require Level 3's approval before Ameritech Illinois could sell, assign, or transfer any exchanges or property subject to the agreement, and to delete language in that section that would absolve Ameritech Illinois of responsibility under the agreement with respect to exchanges or property it sells, assigns, or transfers. Level 3's proposals are plainly unreasonable. Although it is uncommon, incumbent LECs sometimes do sell or transfer exchanges, and once that occurs there is no way the incumbent LEC could continue to carry out its obligations under an interconnection agreement. For example, how could an incumbent LEC unbundle network elements or provide interconnection to facilities that it no longer owns, controls, or maintains? (*See* Silver Direct at 16.) Furthermore, there is no basis for requiring Level 3's pre-approval of such an exchange or transfer. An incumbent LEC's duties to CLECs under Section 251 of the 1996 Act are limited to the facilities it owns and controls and the areas it serves; there is no barrier to selling exchanges or facilities, and once that occurs (which usually requires Commission approval anyway), the incumbent's obligations with respect to those areas or facilities ends, and no CLEC has the right to stand in the way of such sales or transfers.

Fifth, Level 3 seeks to change the language in GT&C 29.3 so that Level 3 would be required to give Ameritech Illinois only 30 days' advance notice of an assignment or transfer of the interconnection agreement, as opposed to the 90 days' advance notice proposed by Ameritech Illinois. As Ameritech Illinois witness Silver explained, 90 days'

notice is essential to ensure that Ameritech Illinois has sufficient time to update its records to account for the assignment of an interconnection agreement to another entity:

> Given the complexity of the communications industry and different regulations that govern the different types of communications carriers, 30 days is simply not enough time to evaluate and accommodate operational and/or provisioning changes that may result from an assignment or transfer, and to subsequently negotiate, draft, and amend affected contract provisions.

(Silver Direct at 14.) If sufficient time is not allowed, Ameritech Illinois might be unable to complete the necessary updates before the assignment occurs, which could result in billing problems and other difficulties that could easily have been avoided. Level 3 obviously will know well in advance that it intends to assign an interconnection agreement, and has shown no reason why it could not give 90 days' advance notice rather than 30 days' advance notice.

Issue 15: Force Majeure

THE PARTIES RESOLVED THIS ISSUE.

Issue 16: Scope of Agreement

THE PARTIES RESOLVED THIS ISSUE.

Issue 17: Access to CLEC Network Elements

THE PARTIES RESOLVED THIS ISSUE.

Issue 18: Combinations of Unbundled Network Elements Generally

Level 3 Position:

Level 3 seeks the ability to combine UNEs with tariffed services other than access services.

Ameritech Illinois Position:

The 1996 Act does not require Ameritech Illinois to allow combinations of UNEs with tariffed services other than tariffed collocation services.

The lone issue here concerns the combination of UNEs with tariffed services other than access services and collocation services. The parties and Staff agree that the contract should not authorize Level 3 to combine UNEs with Ameritech Illinois' tariffed access services (or to have Ameritech Illinois do such combining) and that Level 3 can combine UNEs with tariffed collocation services. (Tr. 282; Hunt Rebuttal at 14; Clausen Direct at 5.) Staff also concludes that Level 3 cannot require Ameritech Illinois to combine UNEs with other tariffed access services at Level 3's request (Clausen Direct at 4), and Level 3 does not appear to contest that point. Thus, the remaining question is whether the agreement should bar Level 3 from combining UNEs with other Ameritech Illinois tariffed services. It should.

The purpose of an arbitration is to decide disputed issues in the manner required by the 1996 Act. 47 U.S.C. 252(c)(1). As Level 3 witness Hunt conceded, nothing in the 1996 Act or the FCC's regulations affirmatively entitles Level 3 to combine UNEs with tariffed services. (Tr. 283.) To the contrary, Congress separately defined "network elements" and "telecommunications service" (47 U.S.C. 153(29) and 153(46)),[22] and while the FCC and the courts have spent much energy creating and reviewing the FCC's rules on combinations of UNEs with *other UNEs*, the FCC has never even hinted that UNEs and *services* may be combined. Indeed, when it recently addressed existing loop-transport UNE combinations, the FCC expressly concluded, with respect to three different options that CLECs could use to qualify

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[22] Indeed, the FCC specified that a "network element" is "a facility and *not* a service." *First Report and Order*, para. 343 (emphasis added).

to lease such a combination, that "[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services." *Supplemental Order Clarification*, para. 22(a), (b), and (c). Similarly the FCC declined to address certain CLECs' requests to combine UNEs with resale services in the *First Report and Order*, paras. 327, 341.

There is no good reason to create a new rule of law in this arbitration to allow CLECs to combine UNEs with tariffed services. Level 3 has relied on 47 C.F.R. 51.309(a), which states that an incumbent LEC may not restrict the use of UNEs in a manner that would "impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends." Ameritech Illinois' proposed language does not violate this rule. Even if one assumed, *arguendo*, that this rule applied to combining UNEs with services, there is absolutely no evidence that Level 3 intends to, much less immediately needs to, combine or connect UNEs and tariffed services. Level 3's witness could not identify a single present or potential situation where Level 3 would need to combine UNEs and tariffed services. (Tr. 285-87.) Thus, Ameritech Illinois' proposal would not "impair" Level 3's provision of service in any way.

Staff's theory on this point also comes up short. Staff's Mr. Clausen assumes that the *Supplemental Order Clarification*'s prohibition on UNE-service combinations was limited to special access services. (Clausen Direct at 5.) The plain language of that decision, however, applies to *all* tariffed services. *Supplemental Order Clarification*, para. 22. Thus, Mr. Clausen's reading is unduly restrictive and provides no basis for allowing Level 3 to combine UNEs and services.

In short, nothing in the 1996 Act or FCC rules entitles Level 3 to combine UNEs and tariffed services and Level 3 has not shown that its present, future, or potential business plans would in any way be affected by not being able to combine UNEs and services. Accordingly, Ameritech Illinois' proposed Section 2.9.8 of the Appendix UNE should be adopted in full.

Issue 19: Enhanced Extended Loops

Level 3 Position:

Level 3 seeks objects to using Ameritech Illinois' standard certification form for special access-to-UNE conversions; contends that service to ISPs counts as "local exchange" service for such certifications; requests a "fresh look" period for termination charges in special access contracts; and objects to the nonrecurring charges that apply to such special access conversions.

Ameritech Illinois Position:

Level 3 should use Ameritech Illinois' standard certification form; cannot treat ISP-bound traffic as local for these purposes; and must pay applicable termination and nonrecurring charges.

In light of the FCC's June 2, 2000 *Supplemental Order Clarification*, there are only three matters in dispute with respect to the conversion of existing Level 3 special access arrangements to loop-transport UNE combinations (what Level 3 calls "Enhanced Extended Loops" or "EELs"). These are: (1) whether Level 3 must use Ameritech Illinois' standard certification form when seeking such a special access conversion; (2) whether, in making the required certification, Level 3 may treat the service it provides to ISPs as "local exchange service"; and (3) what termination charges and nonrecurring charges Level 3 must pay for Ameritech Illinois to perform such special access conversions.

I. AMERITECH ILLINOIS' CERTIFICATION FORM SEEKS NO MORE INFORMATION THAN REQUIRED BY THE FCC AND IMPOSES NO ADDITIONAL BURDENS ON LEVEL 3.

A CLEC seeking to convert an existing special access arrangement to a loop-transport UNE combination must certify that it is "providing a significant amount of local exchange service" over the requested combination. *Supplemental Order*, para. 5 and n.9. Under the FCC's *Supplemental Order Clarification*, CLECs have three options that define a "significant amount of local exchange service," and CLECs may obtain a special access conversion by certifying that they meet one of these options. For example, a CLEC choosing option 2 would have to certify that it

> provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic.

Supplemental Order Clarification, para. 22(b).

In light of the requirements of the *Supplemental Order Clarification*, Ameritech Illinois' parent, SBC, has developed a standard certification form to ensure that CLECs seeking special access conversions meet the FCC's requirements. (*See* Gates Direct, TJG Schedule 3.) This form seeks no more information than the CLEC would have to gather anyway in order to make a valid certification. The following table, for instance, shows the information the form requires for Option 2 and the basis for requiring such information:

Information Required by Ameritech Illinois Form	Basis for Requiring Information
1. Facility Identification Number for each circuit	Ameritech Illinois obviously must know the number of the circuit being converted in order to process the order.
2. Customer Name and Address for each circuit - Total customer lines at the address - Total lines provided by Carrier at the address	The *Supplemental Order* (para. 5) requires the loop-transport combination to be used to provide local exchange service to "a particular customer." This ensures that requirement is met. The *Supplemental Order Clarification* (para. 22(b)) requires the CLEC to provide at least one-third of the end-user's local exchange traffic "measured as a percent of total end user customer local dialtone lines." This information helps ensure that requirement is met.
3. Number of active channels on the loop portion of each circuit - The number of channels carrying at least 5% local voice traffic	Under the *Supplemental Order Clarification* (para. 22(b)), "at least 50 percent of the activated channels on the loop portion of the loop-transport combination [must] have at least 5 percent local voice traffic individually, and the entire loop facility [must have] at least 10 percent local voice traffic." This information helps unsure that the "50% with at least 5% local traffic" requirement is met.
4. Certify that at least 10% of each facility carries local voice traffic	This information helps ensure that the CLEC meets the 10% local voice traffic requirement noted above.

Thus, all of the information required by the certification form is not only reasonable but necessary to ensure that the certification is bona fide. Further, Level 3's witness conceded that Level 3 would have to gather all of this information in order to make a certification, no matter what form the certification took. (Tr. 158-60.) Ameritech Illinois merely asks that Level 3 share this information at the time of the certification. That places no additional burden on Level 3, and

it saves Ameritech Illinois from having to accept Level 3's certifications on blind faith. Thus, the issue here is not whether Ameritech Illinois' certification form places some unfair burden on Level 3 (it doesn't) or requests information other than that necessary to complete the order and ensure the certification requires with the law (it doesn't), or whether the form will slow order processing (it won't). Rather, the question is whether Level 3 should be required to provide information it already has in order to give some indication that its certification is valid.

Level 3 opposes Ameritech Illinois' certification form on two grounds, neither of which has merit. *First*, Level 3 relies on paragraph 28 of the *Supplemental Order Clarification*, which states that "a letter sent to the incumbent LEC by a requesting carrier is a practical method of certification." What Level repeatedly fails to mention, however, is the first part of that sentence, which states that the FCC "do[es] not believe it is necessary to address the precise form that such a certification must take." In other words, a letter might be okay, but it is not the only way. Ameritech Illinois' certification form cannot be much more difficult to complete than a letter and the necessary order form.

Second, Level 3 claims that Ameritech Illinois' proposed form is an attempt to "audit" Level 3's order before processing it. That is precisely backwards. Ameritech Illinois' certification form will help *prevent* audits by requiring Level 3 to provide some minimal assurance that the certification meets the FCC's requirements. Without such assurances, Ameritech Illinois would likely be forced to conduct audits more frequently (as authorized by the *Supplemental Order Clarification,* paras. 28, 31-32).

In sum, Ameritech Illinois' proposed certification asks for nothing more than the information Level 3 should already have before making a certification that complies with the

law. This places no extra burden on Level 3, but does provide Ameritech Illinois with reasonable assurance of Level 3's good faith in making the certifications, and in all likelihood would reduce the need for subsequent audits of Level 3's legal compliance.

II. ISP-BOUND TRAFFIC CANNOT BE TREATED AS "LOCAL EXCHANGE SERVICE" FOR PURPOSES OF LEVEL 3'S CERTIFICATIONS.

Level 3 concedes that between 95 and 100 percent of its dial-up traffic is ISP traffic. (Tr. 245.) Naturally, then, the question whether service to ISPs can be treated as "local exchange service" for purpose of the certifications needed for a special access conversion is an important one. Level 3 contends that such service can be treated as local under footnote 64 of the *Supplemental Order Clarification,* which states that "[t]raffic is local if it is defined as such in a requesting carrier's state-approved local exchange tariff and/or it is subject to a reciprocal compensation arrangement between the requesting carrier and the incumbent LEC." Level 3 contends that ISP-bound traffic is "subject to a reciprocal compensation arrangement" with Ameritech Illinois and therefore falls within this footnote.

Level 3's argument is foreclosed by the plain language of the *Supplemental Order Clarification.*[23] The very footnote Level 3 cites is attached to a sentence that refers to the percentage of "local *voice* traffic" that the requesting CLEC must provide to meet the FCC's criteria. *See Supplemental Order Clarification*, para. 22(b) (emphasis added.) Indeed, whenever

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[23] Level 3 and Staff may cite the Focal/Ameritech Illinois arbitration decision in Docket No. 00-0027, which found that ISP-bound traffic could count as local exchange service for purposes of these certifications (Order at 15.) That decision, however, was issued on May 8, 2000, well before the FCC's *Supplemental Order Clarification* of June 2, and therefore did not consider the FCC's explicit ruling on what constitutes local exchange service for purposes of these certifications. As described herein, the *Supplemental Order Clarification* fully supports Ameritech Illinois' position.

the FCC refers to the percentage of local service that must be provided by the requesting CLEC, it refers explicitly to "local *voice* traffic" and "local *dialtone* service." *Id.*, para. 22(b)-(c) (emphasis added.) The service Level 3 provides to ISPs is, by definition, a data service, and therefore is *neither* "local voice traffic" nor "local dialtone service." Thus, ISP-bound traffic does not and cannot fall within the FCC's requirements and therefore cannot be reclassified as "local exchange service" for purposes of CLEC certifications.

Footnote 76 of the *Supplemental Order Clarification* further supports this analysis. Footnote 76 states that "[w]ith regard to data services, we note that the local usage options we adopt do not preclude a requesting carrier from providing data over circuits that it seeks to convert, *as long as it meets the thresholds contained in the options*." (Emphasis added.) By drawing this distinction, the FCC clearly recognized that "data service" — such as service to ISPs — is *not* "contained in the options" that define a significant amount of "local exchange service."[24]

Accordingly, ISP-bound traffic does not meet the specific requirements of the *Supplemental Order Clarification* for local exchange traffic that can be counted in a CLEC's

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[24] Further, although Level 3 implies that footnote 64 of the *Supplemental Order Clarification* is meant to apply to ISP-bound traffic when it refers to traffic subject to reciprocal compensation arrangements, a close reading of the footnote shows that is not the case. To begin with, Level 3 cannot meet the requirements of the first sentence of footnote 64, as whether service to ISPs is subject to reciprocal compensation is an open issue in this arbitration (Issue 1a.) Moreover, the second sentence of footnote 64 does not refer to the FCC's now-vacated declaratory ruling on ISP traffic, but rather refers back to the FCC's *First Report and Order*, where the FCC acknowledged the state commissions' traditional authority to determine "what geographic areas should be considered 'local areas' for purposes of applying reciprocal compensation arrangements." That traditional authority, of course, is significant with respect to voice traffic but, as the FCC well knows, the proper classification of ISP-bound traffic rests on issues well beyond merely defining a geographic local calling area.

certifications, and there is no reason or basis to depart from the FCC's rule here. The contract should therefore preclude Level 3 from treating ISP-bound traffic as local voice service in its certifications.

III. LEVEL 3 CANNOT AVOID PAYING APPLICABLE TERMINATION CHARGES AND NONRECURRING CHARGES FOR SPECIAL ACCESS CONVERSIONS, AND THERE IS NO EVIDENCE THAT AMERITECH ILLINOIS' CHARGES ARE UNREASONABLE.

Level 3 next challenges the termination charges that apply under its special access service contracts when it converts a special access arrangement to a loop-transport UNE combination, as well as the nonrecurring charges that apply for completing such a conversion. Level 3 attempts to confuse these two issues by treating them as one and conflating contractual termination charges with UNE nonrecurring charges. (*See* Gates Rebuttal at 7.) The analyses, however, are distinct.

Termination Charges. Termination charges are the charges in special access volume and term contracts that apply when the purchaser ends the contract prematurely, and typically are designed to make the provider of the service whole. Level 3 contends that the Commission should impose a six-month "fresh look" period for CLECs "during which termination penalties, if they exist, are waived as CLECs determine whether any of their special access circuits qualify for EELs." (Gates Rebuttal at 8.) There is no legal basis for any such requirement. The FCC explicitly stated in the *UNE Remand Order* that requesting CLECs *must* be responsible for any applicable termination charges when they order special access conversions. *UNE Remand Order*, para. 486 n.985 ("any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume and term contracts.") The FCC imposed no "fresh-look" requirement on incumbent

LECs, even though it certainly was aware of the existence and extent of termination charges in special access contracts. If the FCC saw no reason for a "fresh look" period, there is no reason for this Commission to impose one; moreover, if Level 3 wants relief from the FCC's requirement that it pay termination charges, Level 3 should seek that relief from the FCC, not try to end-run the FCC's decision on a state-by-state basis in arbitrations.[25]

Nonrecurring Charges. Nonrecurring charges are the charges that apply to every UNE to reimburse Ameritech Illinois for certain provisioning costs. With regard to nonrecurring charges for special access conversions (*i.e.*, service ordering and administrative charges), Level 3 mischaracterizes the work Ameritech Illinois must perform as merely "re-naming a special access circuit." (Gates Rebuttal at 7.) That is simply not true. Ameritech Illinois must perform a number of activities to make such conversions, as Mr. Silver explained. (Silver Direct at 29-30.) In order to maintain accurate records and smooth operations, Ameritech Illinois must, from an ordering perspective, discontinue the existing service and process a "new" order for the loop-transport combination. This process is transparent to the end-user (as there is no physical disconnection of the service), but is essential to ensure that UNE combinations are accurately recognized in Ameritech Illinois' systems. *See Texas 271 Order*, paras. 219-20 (approving similar ordering process for other UNE combinations.) Because these costs are incurred to provide the UNEs to Level 3, Level 3 must be responsible for the charges.

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[25] In addition, a Commission order requiring Ameritech Illinois to waive its contractual right to termination charges in its privately-negotiated agreements would raise serious constitutional issues under the Contract Clause and the Takings Clause.

Issue 20: Local Loop Definition

[The parties resolved all aspects of Issue 20 except the one identified below.]

***Level 3 Position*:**

Ameritech Illinois should be required to provide written notice of the availability of higher capacity loop offerings, including but not limited to OC-192, within sixty (60) days of deploying such higher capacity loops in its network, unless SBC has tariffed the higher capacity loop offering within sixty (60) days of deploying such loops in its network.

Ameritech Illinois Position:

Ameritech Illinois' proposed language in Appendix UNE 7.1 faithfully implements ILEC obligations under the FCC's *UNE Remand Order* and, therefore, Ameritech Illinois' language should be adopted. The notice requested by Level 3 should not be required.

The notice that Level 3 is requesting is not required by current law, and is not provided by Ameritech Illinois to other CLECs. For that reason alone, the Commission should reject Level 3's proposal and require Level 3 to work within the same system for learning about and ordering access to loops as all other CLECs in Illinois.

There is a compelling reason that Ameritech Illinois cannot agree (or reasonably be required) to notify Level 3 (or other CLECs) that a high capacity loop type, such as OC-192, has been newly deployed in Ameritech Illinois' network. The reason is that the loop type is not generally available on standard contract terms during the period following its initial deployment, because there is no UNE price for the loop type (the price has to be be developed through a cost study) and the loop type, far from being ubiquitous in Ameritech's network, exists (initially) only in limited locations. Thus, it would be pointless for Ameritech Illinois to send Level 3 (for example) a letter saying that Ameritech Illinois had deployed some OC-192 loops, because (certainly within the 60-day period referenced in Level 3's proposed language), OC-192 loops

will not be available on standard terms, conditions or rates. That being so, Level 3 would have to request an OC-192 by means of the bona fide request ("BFR") procedure in the parties' agreement — a procedure that is always available to Level 3.

At a pragmatic level, the issue boils down to this: If Level 3 wants an OC-192 (or any other advanced loop) in a particular location *today*, Level 3 can request one via a BFR, and Ameritech Illinois will then inform Level 3, as spelled out in the BFR provisions in the agreement, whether an OC-192 can be made available at that location and, if it can, will work with Level 3 to develop a price for that product in that location. If, on the other hand, Ameritech Illinois were to send out a letter to Level 3 (and all other CLECs) announcing that OC-192s were deployed in Ameritech Illinois' network, Level 3 (and other CLECs) would attempt to order OC-192s as if they were available on standards terms and conditions, only to have their orders rejected because OC-192s are not available on that basis.

Accordingly, the Commission should reject Level 3's request for individual notification that advanced loop types have been deployed in Ameritech Illinois' network, so that Level 3 can access new loop types as they become available in the same manner as all other CLECs in Illinois.

Issue 21: Subloops

THE PARTIES RESOLVED THIS ISSUE.

Issue 22: Dedicated Transport

Level 3 Position:

Level 3 contends that Ameritech Illinois should provide unbundled dedicated transport not only between the locations required by the FCC's rule 319 (47 C.F.R. § 51.319), but also between an Ameritech Illinois office and an office of another carrier where Level 3 has a presence. Level 3 also contends that

Ameritech Illinois should provide written notice within 60 days of the deployment of high-capacity dedicated transport in the Ameritech Illinois network.

Ameritech Illinois Position:

Unbundled dedicated transport is required only between the locations designated by the FCC in Rule 319(d)(1)(i), and offices owned by third parties do not fall within this definition. There is no reason why Level 3 should require notice of new facilities in a form any different than any other CLEC.

The two open issues with respect to unbundled dedicated transport are (1) whether Ameritech Illinois must provide dedicated transport from its central offices to switches or serving wire centers owned by other carriers where Level 3 maintains a presence; and (2) whether Ameritech Illinois must provide Level 3 with specific notice of the deployment of higher capacity transport facilities.

Level 3's claim that Ameritech Illinois must provide dedicated transport to locations owned by third parties is squarely foreclosed by federal law. The FCC's regulations define unbundled dedicated transport as:

> incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers ***owned by*** incumbent LECs or requesting telecommunications carriers, or between switches ***owned by*** incumbent LECs or requesting telecommunications carriers.

47 C.F.R. 51.319(d)(1)(I) (emphasis added.) That definition plainly does *not* include transport between an Ameritech Illinois central office and an office or switch owned by some party other than Level 3, which is the "requesting telecommunications carrier" in this circumstance. (Tr. 507.) Indeed, the FCC specifically limited the dedicated transport obligation to locations "owned by" the requesting carrier or the incumbent LEC.

The FCC had good reason to so limit the definition of unbundled dedicated transport. The main reason for Level 3 to seek dedicated transport from a third party location to an Ameritech Illinois central office would be to avoid special access charges. (Tr. 507-08.) The FCC has been very careful to limit the risk of such arbitrage in the *Supplemental Order* and *Supplemental Order Clarification*, noting that it would threaten universal service funding and access charge reform. The Commission should not allow Level 3 to undo the FCC's careful work here by redefining dedicated transport.

With regard to Level 3's request for advance, individual notice when Ameritech Illinois deploys high-capacity interoffice transport facilities, the issues are the same as in Issue 20 (local loops). The industry has evolved to using an accessible letter, posted on Ameritech Illinois' website, as the method for notice of deployment of new facilities. If that is sufficient for all other carriers it should also be sufficient for Level 3, which has not presented any evidence of a need for individualized notice or notice of a type or on a schedule different from all other CLECs.

Issue 23: Payload Mapping

Level 3 Position:

Ameritech Illinois should be required to perform logical payload mapping in connection with its provision of the transport UNE. Specifically, Ameritech Illinois should be required to provide payload mapping in any technically feasible manner, including but not limited to: fully concatenated (e.g., the OC12 is mapped at 1 x STS-12c); (2) fully channelized (e.g., the OC12 is mapped at 12 x STS-1); and (3) any possible combination of concatenated and channelized (e.g., the circuit is mapped at 9 x STS-1 and 1 STS-3c).

Ameritech Illinois Position:

Ameritech Illinois will provide payload mapping to Level 3 to the same extent that Ameritech Illinois provides payload mapping to itself or to any other CLEC.

> Specifically, Ameritech Illinois will provide Dedicated Transport as a point-to-point circuit dedicated to the CLEC at the following speeds: DS1 (1.544 Mbps), DS3 (44.736 Mbps), OC3 (155.52 Mbps), OC12 (622.08 Mbps), and OC 48 (2488.32 Mbps.) Ameritech Illinois will provide higher speeds to CLECs as they are deployed in the Ameritech Illinois network.

The language proposed by Level 3 seeks more than payload mapping, which, in any event, Ameritech Illinois has no obligation to provide under either the 1996 Act or the FCC's Rules. Indeed, neither the Act nor the FCC's Rules even references the term "payload mapping." Moreover, Level 3 also wants the "Level 3 Gateway" left undefined as an endpoint of unbundled dedicated transport, and perhaps even established to another carrier's equipment. The language proposed by Ameritech Illinois is reasonable and appropriate, comports with applicable law and, therefore, the Commission should adopt Ameritech Illinois' proposed language and reject Level 3's.

Alternatively, the Commission can take an approach to Issue 23 that is guaranteed to reach a correct result and that would spare the Commission from having to delve into the niceties of payload mapping: Level 3 raised the payload mapping in an arbitration with Ameritech Illinois' SBC counterpart in California. (Tr. 71-72.) Level 3 dropped the issue in California (*id.* 72), but is pursuing it here because Ameritech Illinois responded to a Level 3 data request by saying that it provides certain payload mapping to itself and other carriers. (Tr. 72-73.) Thus, as Level 3 witness Gavalas agreed, what Level 3 wants is for Ameritech Illinois to treat Level 3 the same way it treats itself and other carriers. (Tr. 73.) Accordingly, the Commission's arbitration award could simply order Ameritech Illinois to provide payload mapping to Level 3 to the same extent (no more and no less) than Ameritech Illinois provides payload mapping to itself or to any other CLEC in Illinois.

Issue 24: Dark Fiber

[The parties resolved all aspects of Issue 24 except the one identified below.]

***Level 3 Position*:**

Level 3 maintains it should be permitted to obtain access to up to 50% of Ameritech Illinois' spare dark fiber.

***Ameritech Illinois Position*:**

Ameritech Illinois maintains Level 3, and all other CLECs, should be permitted to obtain access to up to 25% of Ameritech Illinois' spare dark fiber.

Ameritech Illinois' proposed Appendix UNE Section 17.4.1 provides that the "CLEC will not request any more than 25% of the spare dark fiber contained in the requested segment." This provision is reasonable and should be adopted by the Commission. The supply of dark fiber in Ameritech Illinois' network is limited, and it is therefore appropriate to place reasonable limits on the amount of spare dark fiber that any one CLEC may request. In the *UNE Remand Order*, ¶ 199, the FCC recognized the need for such restrictions:

> We do not wish to disturb the reasonable limitations and technical parameters for dark fiber unbundling that Texas or other states may have in place. If incumbent LECs are able to demonstrate to the state commission that unlimited access to unbundled dark fiber threatens their ability to provide service as a carrier of last resort, state commissions retain the flexibility to establish reasonable limitations governing access to dark fiber loops in their states.

Level 3 concedes there is relatively little dark fiber. (Pet. 34.) Nevertheless, Level 3 self-servingly asserts that regardless of the competing needs of other CLECs, it should have access to up to 50% of the spare dark fiber in a requested segment so that it may obtain a "practical quantity." (Pet. 34.) Level 3 provides no basis for its assertion that it requires up to 50% of the spare dark fiber, or for the notion that 50% somehow constitutes a "practical quantity." Indeed, Level 3 concedes that it does not even currently plan to use any Ameritech

Illinois dark fiber. Given that, it is difficult to imagine what justification Level 3 can think it has for demanding the right to take up to 50% of the available dark fiber in any segment and to leave the remainder to be divided up among other CLECs — some of which may actually have current intentions to use it.

There is an additional reason to adopt Ameritech Illinois' proposed 25% figure, and it is a reason that we return to in connection with another issue: Plainly, whatever percentage appears in the Ameritech Illinois/Level 3 agreement should appear in all Ameritech Illinois interconnection agreements; there is no conceivable reason for allowing Level 3 50% while other CLECs are limited to 25%. The 25% figure will appear in Ameritech Illinois' agreements generally, because it is the figure that Ameritech Illinois is proposing, and most CLECs are not going to arbitrate the matter. In such a situation — where (i) the issue is a relatively minor one, which most CLECs will not arbitrate; (ii) the provision at issue should be the same in all of the incumbent's interconnection agreements ; and (iii) there is no absolutely, objectively demonstrable "correct" answer (obviously, 20% or 30% would be more or less as workable as the proposed 25%) — there is something to be said for approving the incumbent's proposal in order to achieve uniformity.[26]

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[26] At first blush, one might think that any CLEC that wants the percentage in the Level 3 agreement could simply adopt it under section 252(i) of the 1996 Act. It is not that easy. To obtain the percentage from the Level 3 agreement, the CLEC would have to adopt all of the provisions in the Level 3 agreement relating to dark fiber, because section 252(i) permits the CLEC only to adopt an unbundled network element (or interconnection or service) on all the same terms and conditions as in the underlying agreement. The CLEC, though, may prefer its own, negotiated, dark fiber provisions, and could obtain the percentage in the Level 3 agreement only by giving up those other provisions.

Issue 25: Diversity

***Level 3 Position*:**

Level 3's Petition states that Ameritech Illinois is required to provide physical diversity for unbundled dedicated transport at TELRIC rates. In the Agreement, Level 3 proposes to strike language providing Ameritech Illinois with a cost recovery mechanism for CLEC-specific diversity.

***Ameritech Illinois Position*:**

Ameritech Illinois has no legal obligation to provide to individual CLECs physical diversity that does not already exist on Ameritech Illinois' network. If Level 3 requests diversity that does not currently exist in the Ameritech Illinois network, it is reasonable for the parties to negotiate appropriate rates that permit Ameritech Illinois to recover its costs for providing such service.

"Diversity" is the general term for network arrangements that allow a call to be completed over an alternative route if the usual route is not available for some reason. Ameritech Illinois will provide Level 3 with diversity where it currently exists in Ameritech Illinois' network. (Oyer Direct at 15.) Physically diverse routing, however, is not common in Ameritech Illinois' network architecture. (*Id.* at 14.) Accordingly, if Ameritech Illinois provides diversity for a CLEC at the CLEC's request, Ameritech Illinois may incur significant additional costs for the additional facilities, equipment, and work activity needed to achieve such diversity, and Ameritech Illinois must be allowed to recover those costs. (*Id.*) That is all that Ameritech Illinois' proposed Section 9.4.2 of the Appendix UNE requires. Level 3 would strike that language, but it has offered no legal, technical, or policy reason for doing so. Moreover, although its position is unclear (because none of its witnesses addressed the issue), it appears that Level 3 would at most be willing to pay "TELRIC" rates for such diversity. Diversity, however, is not a UNE or a form or interconnection, and therefore is not subject to the FCC's

TELRIC rules. *See* 47 C.F.R. 51.501 (applying TELRIC rules to UNEs and interconnection). Thus, Ameritech Illinois' proposed contract language should be adopted.

Issue 26: Cross Connects

THE PARTIES RESOLVED THIS ISSUE.

Issue 27: Points of Interconnection

***Level 3 Position*:**

> Given that Level 3 will initially establish a single POI in each LATA in which it provides local exchange service, Level 3 should be required to establish an additional POI at each Ameritech Illinois access tandem once the traffic exchange between Level 3 and Ameritech with respect to that tandem and its subtending offices meets or exceeds an *OC-12* level.

***Ameritech Illinois Position*:**

> Given that Level 3 will initially establish a single POI in each LATA in which it provides local exchange service, Level 3 should be required to establish an additional POI at each Ameritech Illinois access tandem once the traffic exchange between Level 3 and Ameritech with respect to that tandem and its subtending offices meets or exceeds a *DS-3* level.

The parties have significantly narrowed the question presented by Issue 27. As of the start of hearing, Ameritech Illinois was proposing contract language that would have required Level 3 to establish a point of interconnection at every Ameritech Illinois tandem in a LATA, and Level 3 was proposing that there be no contract requirement that it establish more than one POI in a LATA under any circumstances. Now, Ameritech Illinois has agreed that Level 3 will not be required to establish a POI at every tandem, and Level 3 has agreed that it will be required to establish POIs on a tandem-by-tandem basis once the volume of Level 3 traffic at a given tandem reaches a specified level. The only difference between the parties is what that specified

level should be. Ameritech Illinois maintains it should be the equivalent of a DS3 (*i,.e.*, 672 trunks), while Level 3 maintains it should be the equivalent of an OC-12 (*i.e.*, 8064 trunks).

The only defect in Ameritech Illinois' initial proposal was that, applied literally, it would have required Level 3 to establish points of interconnection even at tandems where it had little or no traffic. Ameritech Illinois has bent over backwards to cure that defect – first offering to limit the POI requirement to instances in which Level 3's traffic at the tandem in question reached a stable level of 24 trunks, and then taking the additional step of increasing that number to 672 trunks. Especially bearing in mind that 672 trunks translates into far more than 672 customers (*see* Tr. 458), it is plainly reasonable, for all of the reasons that Ameritech Illinois offered in support of its initial proposal (*see* Mindell Direct at 2-9; Mindell Rebuttal at 3-5) to require Level 3 to establish a POI at each Ameritech Illinois tandem at which the volume of Level 3 traffic reaches the equivalent of 672 trunks.

Ameritech Illinois' position accords with basic network design principles and assures efficient and reliable use of the public switched network. Level 3's proposal does the opposite, as it would not only threaten premature tandem exhaust, but would necessarily reduce the efficiency — and reliability — of the public switched network. Moreover, in large LATAs (such as LATA 358) carriers incur significant costs for transporting calls over great distances. Transport costs — the costs of facilities used between offices — are mileage sensitive, and a mileage component of transport is included in toll charges for calls terminating outside the local exchange area.

Level 3's position ignores the fact that calls within a single LATA may be local or toll. To the extent that Level 3 does not establish a POI at a tandem where it has traffic, Level 3

avoids transport charges. For example, when an Ameritech Illinois customer dials a number with an NXX established by Level 3 for the originating caller's local exchange area, Ameritech Illinois completes the call without a toll charge. In such circumstances, Ameritech Illinois, not Level 3, is forced to bear the costs of transporting the call to Level 3's nearest POI outside the originating caller's local exchange area.

When a CLEC such as Level 3 has only one switch serving a large area, despite the fact that it is sending a significant volume of traffic through more than one tandem in that area, there will be a savings in switching costs, but an increase in transport costs. Under Level 3's proposal, Level 3 would reap the economic benefit of saving on swiching costs, while Ameritech Illinois would bear the burden of the additional transport costs — costs that would be avoided if Level 3 had a POI at each tandem through which it was sending a significant volume of traffic. While this result might benefit a special interest CLEC like Level 3 and the narrow subset of consumers that Level 3 targets to serve, it is patently unfair to Ameritech Illinois and the telecommunications consuming public at large. It should not be endorsed by the Commission.

If the Commission is not persuaded that the DS3 (672 trunk) threshold proposed by Ameritech Illinois is optimal, then it should set the threshold at the equivalent of an OC3 (*i.e.*, 2016 trunks) rather than the unreasonably high OC12 level proposed by Level 3.

Issue 28: Optical Interconnection

THE PARTIES RESOLVED THIS ISSUE.

Issue 29: Transit Traffic

THE PARTIES RESOLVED THIS ISSUE.

Issue 30: End Office Trunking

THE PARTIES RESOLVED THIS ISSUE.

Issue 31: Forecasting

Ameritech Illinois believes the parties have resolved this issue.

Issue 32: Trunk Blocking

Level 3 Position:

Level 3 has requested a blocking objective of 0.5% for all trunk groups.

Ameritech Illinois Position:

There is no basis in law or policy for Level 3's request that the Commission require Ameritech Illinois, whose network functions at the industry standard and long-established 1% blockage level, to redesign its network to achieve the 0.5% level proposed by Level 3

Ameritech Illinois' network is designed so that during the busiest hour of an average day of the busiest month, 10 out of every 1000 calls will be blocked because no trunk is available to carry them. This 1% blockage rate is standard in the industry (Mindell Direct at 20) and has been the accepted norm in Illinois, for Ameritech and all other carriers, for years. Indeed, it is equal to or better than (depending on the nature of the traffic) the rate that Ameritech Illinois is required to achieve under 83 Ill. Admin. Code § 730.520. Level 3 asks that the Commission require Ameritech Illinois to redesign and rebuild its network so that Level 3 traffic will experience 0.5% blockage, *i.e.*, so that 5 out of every 1000 calls will be blocked.

Level 3's proposal is contrary to federal and state law. As a matter of federal law, It amounts to a demand for superior quality interconnection, when the law is clear that Level 3 is entitled only to parity. (*See, e.g., Iowa Utils. Bd. v. FCC*, No. 3321 (8th Cir. July 18, 2000) (reaffirming that the vacated "superior quality rules" promulgated by FCC violate the plain

language of 1996 Act).) Given that Ameritech Illinois' network is designed so that its own traffic and the traffic of every other carrier with which Ameritech Illinois is interconnected experiences 1% busy hour/busy month blocking, Level 3's request for better treatment for its own traffic not only has no support in the 1996 Act or the FCC's implementing regulations, but is also downright discriminatory. As a matter of state law, Level 3's request amounts to a request for a special exemption from 83 Ill. Admin. Code § 730.520, with no explanation of how the Commission might be authorized to grant such an exemption. (In fairness, it appears that Level 3 was unaware of § 730.520 when it filed its petition; that does not explain, however, why Level 3 has persisted in its position.)

A Commission-imposed 0.5% blocking standard would be not only unlawful but also bad policy. From the point of view of the end user public, the difference between 10 out of 1000 calls being blocked and 5 out of 1000 calls being blocked would be imperceptible. (Mindell Direct at 21, 22.) On the other hand, the expense of establishing the additional trunk groups that would be necessary to achieve this imperceptible improvement in service standards would be enormous. (Mindell Direct at 21-22), and Level 3 is not offering to compensate Ameritech Illinois for those expenditures (Tr. 109).

Issue 33: Trunk Utilization

Level 3 Position:

When Level 3's existing trunks reach a utilization level of 50%, Level 3 would like to require that Ameritech Illinois build additional trunks in order to accommodate projected increases in Level 3 traffic. Level 3 would also like the contract to specify that Level 3 may place orders to augment trunks to an initial utilization level of 35% at the time the additional trunks are turned up.

Ameritech Illinois Position:

When Level 3's existing trunks reach a utilization level of 50%, Ameritech Illinois would like to accommodate projected increases in Level 3 traffic by (1) increasing Level 3's utilization of existing trunks to 75% and (2) allowing Level 3 to order new trunks when its utilization reaches 75%.

The basic question posed by Issue 33 is whether Level 3's trunks will be configured for 50% utilization, as Level 3 proposes, or 75% utilization, as Ameritech Illinois proposes. 50% utilization means that during a busy hour (defined as the busiest hour of the average day of the busiest month (Tr. 435)), only 50% of the trunks are needed to carry all the traffic; 75% utlization means that during a busy hour, 75% of the trunks are needed to carry all the traffic. (Mindell Direct at 23.) Ameritech Illinois' proposed 75% utilization encourages Level 3 to make efficient use of the network without imposing inefficient network build out costs for new trunks before they are necessary. Level 3's proposed 50% utilization, in contrast, would be grossly inefficient, because it would allow Level 3 to require Ameritech Illinois to install new trunks when Level 3 is using only 50% of the capacity of its existing trunks. In other words, Level 3 could demand that Ameritech Illinois install new trunks at a point where the total traffic volume that Level 3 is generating would have to double in order for the trunks that Level 3 already has to be fully used. (Tr. 111.)

If the parties' agreement were to empower Level 3 to require Ameritech Illinois to establish additional trunks when the current trunks in service were at only 50% utilization, Ameritech Illinois would wind up with stranded investment through no fault of its own. (Mindell Direct at 24.) When Level 3 orders additional trunks, Ameritech Illinois bears the costs of the trunks on its side of the point of interconnection between the parties' networks. (Tr. 110-11.) To the extent that those trunks remain unused, that investment is stranded, because

Level 3 is not willing to compensate Ameritech Illinois for the expenses it incurred in putting up the unused trunks. (Tr. 113.) To be sure, Ameritech Illinois can reclaim unused trunks from Level 3, but there is no assurance that Ameritech will be able to put those trunks to use.

Finally, Ameritech Illinois' proposal should be accepted for the reasons set forth in the last paragraph of the foregoing discussion of Issue 24.

Issue 34: Indemnity

THE PARTIES RESOLVED THIS ISSUE.

Issue 35: Significant Degradation of Services Caused by Deployment of Advanced Services

THE PARTIES RESOLVED THIS ISSUE.

Issue 36: Intervals for Adjacent Structure Collocation

THE PARTIES RESOLVED THIS ISSUE.

Issue 37: Continuation of Services

THE PARTIES RESOLVED THIS ISSUE.

CONCLUSION

For the reasons set forth above, and as further elaborated and supported in this proceeding, Ameritech Illinois respectfully urges the Commission to rule in its favor on the contested issues.

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Respectfully submitted,

AMERITECH ILLINOIS

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